

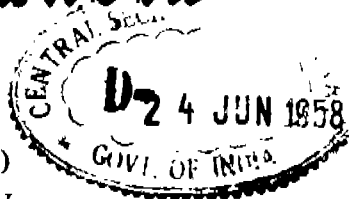
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EXTRAORDINARY

PART II—Section 3—Sub-section (ii)

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No. 102] NEW DELHI, SATURDAY, JUNE 14, 1958/JYAISTHA 24, 1880

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 6th June, 1958/16th Jyaistha, 1880 (Saka).

S.O. 1119.—In continuation of Election Commission's notification No. 92/62/57 dated the 1st February, 1958 published in the Gazette of India Extraordinary, Part II, section 3 dated the 6th February, 1958 under section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the judgment of the High Court of Madhya Pradesh, at Jabalpur delivered on the 8th May, 1958, on the appeal filed by Shri Umashanker Muljibhai Trivedi, of 11 Neemuch Cantonment, Madhya Pradesh, against the order dated 15th January, 1958, of the Election Tribunal, Ratlam in the Election Petition No. 62 of 1957.

HIGH COURT OF MADHYA PRADESH, JABALPUR

FIRST APPEAL NO. 32 OF 1958

Umashanker Muljibhai Trivedi, 11 Neemuch Cantonment, Madhya Pradesh.—Appellant.

1. Sri Manaklal of Rampura.
2. Shri Koksingh Mantri Ramrajya Parishad, Mandsaur.
3. Shri Shyamsingh, Dalauda, Sugar Mill Dalauda.
4. Shri Shivdarshanlal of Mandsaur.—Respondents.

Appeal by petitioner from the order of the Court of the Member, Election Tribunal, Ratlam presided in by Shri M. K. Kaul dated the 15th January, 1958 in Election Petition No. 62 of 1957 Original claim for declaration that the election of the respondent No. 1 as a member of the House of the People from the Mandsaur Parliamentary Constituency be set aside. Decreed for Election Petition dismissed Claim in appeal for setting aside the order of the Member, Election Tribunal, Ratlam and that the case be remanded for trial according to law. Memo. of appeal presented by Shri U. M. Trivedi Counsel for appellant, on 14th February, 1958.

The appeal coming on for final hearing on 5th May, 1958 before the Honourable the Chief Justice Shri M. Hidayatullah and the Honourable Shri Justice G. P. Bhutt in the presence of Shri Y. S. Dharamdhikari counsel for the appellant, and of Shri R. S. Dabir Counsel for the respondent, the following judgment was delivered by the Court:—

JUDGMENT

This appeal has been filed by U. M. Trivedi under section 116A of the Representation of the People Act, 1951 (hereinafter referred to as the Act)

and is directed against the order of the Election Tribunal, Ratlam, dismissing his election petition in limine on the ground that it was not accompanied by a valid receipt of deposit as required by section 117 of the Act.

2. The appellant and the four respondents were contesting candidates for election to the House of the People from the Mandsaur Parliamentary Constituency. As a result of the poll respondent No. 1 was declared elected. In his election petition, the appellant alleged commission of various corrupt practices by respondent No. 1, or his agents, or by other persons with his consent. He accordingly prayed for a declaration that the election of respondent No. 1 was void and that he himself (appellant) was elected.

3. The election petition was contested by respondent No. 1 and proceeded *ex-parte* against the other respondents. Respondent No. 1 raised a preliminary objection that the petition was liable to be dismissed under section 90(3) as the appellant had not enclosed with it a valid receipt of deposit as required by section 117. This contention was upheld by the Tribunal, and consequently the petition was dismissed.

4. It was contended by the appellant that since the Election Commission accepted the receipt of deposit and did not dismiss the election petition under section 85 of the Act, the Tribunal should act on the rule of contemporary construction embodied in the maxim of *contemporanea expositio est optime et fortissima in lege*, and accept the receipt as valid. The maxim hardly applies where the Courts are called upon for the first time to interpret a law or soon after its enactment. It applies to a case where the meaning of a statute is in doubt and for removing its assistance is taken of the construction placed upon it by the contemporary Courts at the time of its enactment or soon thereafter: Note 218 of 'The Construction of Statutes, 1940 edn., by Crawford'. This principle is obviously not applicable to the present case, as the Election Commission is not a judicial but an executive or administrative body. The proper rule is contained in Note 219 of the same book, which has been quoted by the Tribunal in its order. That rule is also not applicable, as the provision under consideration is not ambiguous. The matter has also by now been covered by judicial decisions, and consequently guidance should be taken from them and not from the action of the Election Commission.

5. A request was also made by the appellant to the Tribunal for permitting him to lead extrinsic evidence to bring out the true meaning and import of the receipt of deposit. This request was, in our opinion, rightly disallowed by the Tribunal. The clear intendment of section 118 of the Act is to make the receipt itself a self contained document which should *ex-facie* show that the statutory requirements have been fulfilled. That matter cannot ordinarily be allowed to be drawn into the arena of evidence.

6. The copy of the chalan on record shows that the deposit was made in the Government Treasury by one K. Y. Borkar. He is said to be clerk of the petitioner and to have been authorised by him to present the election petition on his behalf to the Election Commission. The chalan, however, does not show his representative capacity. In the column relating to the particulars of the remittance and of authority, the entry is in these terms:

"Election Petition deposit in favour of the Secretary, Election Commission of India, New Delhi."

The Tribunal was of the opinion that as this entry did not disclose that the deposit made as 'security for costs' of the election petition, and also because the deposit was not made by the appellant or his duly authorised agent, there was no proper compliance with section 117 of the Act.

7. It has recently been held by this Court in *Muti Ahmed v. Virendra Singh* (1958 M.P.J.J. 289) and *Shivaprasad v. Chandrika Prasad* (1958 M.P.J.J. 192), that what the law requires is a real and effective compliance with the provisions of section 117 of the Act, and accordingly, if the defect is of a formal or trivial character, the Tribunal would not be justified in dismissing the election petition under section 90(3) & *ibid*. On this Principle, it appears to us that the entry quoted above clearly implies that the deposit was made as costs of the election petition. Reference to section 34 of the Act by the Tribunal in this connection is not apposite. The receipt for the deposit under that section is not required to be enclosed with the election petition, and since it remains with the Returning Officer, there can be no possible mistake that the receipt accompanying the election petition is related to any deposit other than that under section 117.

8. Likewise, we are of opinion that want of description of K. Y. Borkar as the agent of the appellant is, in view of the other entry in the chalan, only a very technical defect. In the column relating to the person on whose behalf the money is paid the name of the appellant is entered. This clearly indicates, without the aid of any extraneous evidence, that he had acted for and on behalf of the appellant. Such a defect would not attract the provisions of section 90(3) of the Act.

9. It was, however, contended that if the language of section 117 is contrasted with that of section 34 of the Act, it would appear that the former excludes the making of the deposit by any person other than the petitioner himself. Section 34 is only an enabling provision, and on its basis no exclusion can be read in section 117 in the absence of any clear words to that effect. Differing from the Tribunal, therefore, we hold that there was real and effective compliance with the provisions of section 117 of the Act and accordingly the election petition could not be dismissed under section 90(3) *ibid*.

10. This brings us to the question whether an appeal lies under section 116A of the Act from an order of the Tribunal under section 90(3) *ibid*. This question recently arose in *Gulsher Ahmed v. Election Tribunal Chhatarpur* (1958 M.P.L.J. 150) in which the answer was given in the affirmative. It was argued that section 90(3) is not mentioned in section 116A and thus no appeal lies, because the orders contemplated under section 98 are all passed at the end of the trial. Reference may be made to section 118 of the Act. An order there may be passed at any time during the course of the trial. This may happen at a time when the trial is almost over. If this happens towards the end of the trial, it is inconceivable that such an order can be regarded as *in limine* at that stage. Sections 90(3) and 118 give power and lay down a rule of decision but their effect is to be found in section 98 and hence the consequential sections only mention sections 98 and 99. See for analogy section 3 of the Indian Limitation Act. We see no reason, therefore, to change the view taken in the earlier case.

11. The result is that the appeal succeeds and is allowed. The order of the Tribunal is accordingly set aside and the election petition is remitted to it for trial in accordance with law. In the circumstances of the case, there shall be no order as to costs. The amount of the security deposit shall be returned to the appellant.

(Sd.) M. HIDAYATULLAH,

Chief Justice.

1958

(Sd.) G. P. BHUTT,

Judge.

May, 1958

[No. 82/62/57-8000.]

By order,

DIN DAYAL, Under Secy.

